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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,405	12/12/2001	William E. Julien	7223	3664

7590 03/26/2003

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EXAMINER

SAYALA, CHHAYA D

ART UNIT	PAPER NUMBER
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1761

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DATE MAILED: 03/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,405

Applicant(s)

JULIEN, WILLIAM E.

Examiner

C. SAYALA

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being by anticipated by Julien (US Patent 5709894).

See claims 1-10 which show all of the limitations.

3. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being by anticipated by Julien. (US Patent 5783238).

See col. 14, lines 53-55, claims 1-8, col. 5, lines 30-41.

4. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being by anticipated by Julien. (US Patent 5863574).

See col. 5, all the claims, col. 6, lines 15-20, col. 5, lines 35-45, col. 6, lines 45-51.

5. Claims are 1-3, 5-6, 9 and 12 are rejected under 35 U.S.C. 102(b) as being by anticipated by Stuhr Enterprises, Inc. (WO 98/49903).

The process mixes fermentation solubles of molasses and glutamic acid, a carrier of wheat middlings, uses a temperature as shown at page 9, and discloses a moisture content between 1-10% (abstract). The amount of feed is also disclosed (abstract).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4, 7-8, 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stuhr Enterprises, Inc. in view of Julien (US Patent 5709894).

The WO patent is as described above. It does not teach the addition of glutamic acid or corn fermentation solubles in addition to glutamic acid fermentation solubles. The Julien patent teaches such additions to a feed that is similar to Stuhr, and has the same moisture requirements as well as the method of making. It would have been obvious to one of ordinary skill in the art to add the corn fermentation solubles which may be considered equivalent to molasses and glutamic acid shown by Stuhr, and to

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also add glutamic acid because it is well known that such amino acids are important dietary additions in the feed.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6312710. Although the conflicting claims are not identical, they are not patentably distinct from each other because the feed additive is the same although the claim is of a different scope and the methods to feeding an animal overlap.

9. Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6514521. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the feed additive is the same although the claim is of a different scope and the methods to feeding an animal overlap.

10. Claims 1-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5709894. Although the conflicting claims are not identical, they are not patentably distinct from each other because the feed additive is the same although the claim is of a different scope and the methods to feeding an animal overlap.

11. Claims 1-3, 5-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5863574. Although the conflicting claims are not identical, they are not patentably distinct from each other because the feed additive is the same although the claim is of a different scope and the methods to feeding an animal overlap.

12. Claims 1-3, 5-12 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 5783238. Although the conflicting claims are not identical, they are not patentably distinct from each other because the feed additive is the same although the claim is of a different scope and the methods to feeding an animal overlap.


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13. Claims 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5863574 and claims 1-8 of US Patent 5783238 in view of Hirakawa et al. (US Patent 4411991) and GB 955642. The claims of the patent '574 and '238 do not recite the addition of glutamic acid per se. Hirakawa et al teach that amino acids are important in animal diets and further the GB patent shows that glutamic acid improves palatability. For these reasons it would have been obvious to one of ordinary skill in the art at the time the invention was made to make such an addition to the '574 and '238 patent claims. See col. 1, lines 18-20 in '991 and col. 1, page 1 in the GB patent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.


C. SAYALA
Primary Examiner
Group 1700.